

<b>KELLER CONSTRUCTION COMPANY,</b>	)	<b>AGBCA Nos. 2001-118-1,</b>
	)	<b>2002-103-1, 2002-108-1</b>
Appellant	)	
	)	
<b>Representing the Appellant:</b>	)	
	)	
Robert A. Anderson, Esquire	)	
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	)	
<b>Representing the Government:</b>	)	
	)	
Elise Foster, Esquire	)	
Office of the General Counsel	)	
U. S. Department of Agriculture	)	
507 25th Street, Room 205	)	
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**DECISION OF THE BOARD OF CONTRACT APPEALS**

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October 2, 2002

**Before POLLACK, VERGILIO, and WESTBROOK, Administrative Judges.**

**Opinion for the Board by Administrative Judge VERGILIO.**

By letter dated January 2, 2001, the Keller Construction Company, of Pocatello, Idaho (contractor), filed a notice of appeal concerning a contract, No. 50-02S2-9-13007, with the respondent, the U. S. Department of Agriculture, Forest Service (Government). The contract called for the design and construction of four retaining walls to stabilize the Salmon River Road and the bank of the Salmon River in the Deadwater reach in the Salmon-Challis National Forest, Idaho. The original contract price was \$692,069. A modification increased the price by \$59,320.90.

In the initial appeal, docketed as AGBCA No. 2001-118-1, the contractor disputed the contracting officer's denial of its claim for shutdown charges for itself (\$9,322.24) and a subcontractor (\$69,979.73), for expenses relating to alleged differing site conditions (\$10,114.13 plus additional and accruing costs and expenses), for a constructive and second suspension (dollar amount unknown, as stated by the contractor), for failure to grant a time extension (dollar amount unknown,

as stated by the contractor), and for failure to deem the contract commercially impractical to perform (dollar amount unknown, as stated by the contractor).

By letter dated October 10, 2001, the contractor filed a subsequent appeal, docketed as AGBCA No. 2002-103-1, disputing the contracting officer's denial of its claims by decision dated July 13, 2001. The contractor states the amount in dispute to be \$404,465.83 for the two appeals.

By decision dated October 3, 2001, the contracting officer terminated for default the underlying contract. By letter dated December 28, 2001, the contractor filed a notice of appeal, docketed as AGBCA No. 2002-108-1, disputing the termination for default. The notice of appeal states that the amount in dispute upon appeal is \$550,145.75 plus interest and attorney fees, and the claims alleged by the Forest Service.

The Board has jurisdiction over these timely filed appeals pursuant to the Contract Disputes Act of 1978, 41 U.S.C. ' ' 601-613, as amended. While developing the evidentiary record in these appeals, the parties have engaged in settlement discussions. By letter dated October 1, 2002, the parties informed the Board that they have resolved the disputes. As stated in a settlement agreement, with no admission of liability for damages by either party, the Government shall convert the termination for default to one for convenience and shall comply with conditions in a contract modification, the contractor shall seek to dismiss with prejudice all causes of action, each party shall bear its own costs and attorney fees, and each party waives and releases any and all pending or future claims arising out of or connected with the underlying contract. Having entered into a settlement agreement, the parties request a dismissal with prejudice of the three appeals.

**DECISION**

In accordance with the submission, the Board dismisses with prejudice these appeals.

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**JOSEPH A. VERGILIO**

Administrative Judge

Concurring:

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**HOWARD A. POLLACK**

Administrative Judge

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**ANNE W. WESTBROOK**

Administrative Judge

**Issued at Washington, D.C.**

**October 2, 2002**